SERBIA

Disabilities and occupational diseases: Questionnaire of the 4th Committee (2013)

General context of the questionnaire

Regardless of the eventual reimbursement of the preventive and curative health-related costs, there is the problem of providing a replacement income to the worker when he is unable to carry on his employment and earn his own income due to an illness or an accident.

Questionnaire

[1] What are the causes which give the right to the income replacement indemnities that are paid as a result of an inability to work?

Employees employed for definite or indefinite period of time are entitled to right of leave due to temporary inability to work (sick leave) which includes the right to income replacement indemnity, in case their general practitioner determines due to which health reasons derives the temporary inability (illness, injuries at work and outside of work, occupational injuries).

An insured person is entitled to income replacement indemnity for the time of temporary inability to work in following cases:

a) temporary inability to work due to illness or injury outside of work;

b) temporary inability to work due to occupational illness or injury at work;

c) temporary inability to work due to illness or complications in relation to pregnancy maintenance;

d) temporary inability to work due to prescribed measure of mandatory isolation in case that the person is a carrier of communicable diseases or in case of occurrence of infectious diseases in their surroundings;

e) temporary inability to work due to nursing of a member of ill next of kin, under conditions determined by the law;

f) temporary inability to work due to voluntary organ or tissue donation, with the exception of voluntary blood donation;

g) temporary inability to work due to being appointed as an escort to an ill insured person sent to treatment or medical examination in a different city, i.e. while they are in a stationary health facility, under condition of general acts of Health Fund.

[2] Does it make a difference whether the inability is caused by a handicap, illness or accident (as a result of a professional activity or not)?
If temporary inability occurred due to injury at work or occupational disease, or due to voluntary tissue or organ donation, during the time of temporary inability to work, the employee is entitled to income indemnity equalling 100% of indemnity basis (average earnings of the employee earned in three months prior to the injury), in all other cases sum of income replacement indemnity for the time of temporary inability to work equals 65% of indemnity basis, and the basis in this case is average income of the insured employee during three months prior to temporary inability to work.

[3] Does the employer need to take care of all or part of the compensation for incapacity resulting from an occupational disease of one of his workers?

- In case of an occupational disease, how is the disease found, recognized and controlled? How does the worker get the compensation for his occupational disease?
- Specify the conditions and duration of the compensation.

Compensation for the first 30 days of temporary inability is provided by employer, and in case that the inability prolongs over this period of time, the obligation for compensation is taken by the state (competent parent branch of National fund for health insurance). However, compensation is paid by employer who then informs the National fund which results in state refund.

[4] Similarly, does the employer have to take care of all or part of the compensation for incapacity resulting from an accident at work of his employee?

- In case of incapacity resulting from an accident at work, specify the conditions and duration of the compensation.
- If the employer does not take care of the compensation, how is the incapacity to work resulting from an accident at work compensated?

For the period of temporary inability to work due to injury at work, the abovementioned rules are to be applied for compensation (100% basis for compensation, 30 days compensation provided by employer followed by state compensation). When it comes to compensation, employer is liable according to general rules of tort law and it is according to principles of absolute liability, on this basis employee is entitled to protection before general court.

[5] If the illness is not caused by a professional activity, is the worker still entitled to an income during the incapacity to work? If yes, to what income replacement indemnity is the worker entitled and who pays for this?

Answer already provided at numbers 1,2,3,
[6] What are the conditions to be met by the worker to qualify for an income replacement indemnity (eligibility: training and payment of contributions for example; conditions for grant: being unable to work and have ceased all activity, for example)?

Answer already provided at numbers 1,2,3.

[7] What formalities must be met by the worker to prove his incapacity to work and have it recognized?

During the first 30 days of incapacity to work, employee contacts their general practitioner, in case of incapacity lasting over 30 days up to 6 months, employee has to once per month appear before a medical commission of National fund for health insurance with results, diagnosis, specialist reports. If the incapacity lasts longer than continuous 6 months, a process of determining ability to work or disability is initiated ex officio.

[8] How is the amount of income replacement indemnity to which the worker is entitled determined? (for example: a percentage of the lost remuneration)? Does the worker's family situation affect the amount of compensation (whether or not the worker has family members who depend on him for their income for example)?

Answer already provided at numbers 1,2,3,

[9] Is it possible to cumulate the income replacement indemnity with another income or social benefits?

Cumulating of replacement indemnity is possible, but the question is not clear enough.

[10] How is the medical control of the incapacity to work done and by whom?

Answer already provided at number 7

[11] How is the income replacement indemnity granted and terminated (for exemple: is it by a decision taken by the control authority and communicated to the worker)?

Is there any appeal against such decisions? Before which court?

Income replacement indemnity for the time of inability to work is legal right and worker enjoys protection of this right before general court until the time the temporary inability to work ends and worker returns to work or until loss of working capacity or disability is determined.
An employee, who becomes disabled, minding the cause of disability and years of insurance, is entitled to disability pension.

Disability occurs when there is absolute lack of working ability due to changes in health condition caused by injury at work, occupational disease, injury outside of work or illness, which cannot be cured by medical treatment or rehabilitation.

There are differences in conditions for acquiring this right, depending on whether the disability occurred due to injury at work, occupational illness or injury outside of work.

An employee acquires a right for disability pension if the disability is caused by injury at work or occupational illness regardless to number of years of insurance service.

If disability is caused by injury or illness outside of work, requirements for acquiring a right for disability pension are as follows: the loss of working ability occurred before years of age for age pension and completed 5 years of insurance service. Exceptionally, if disability is caused by illness or injury outside of work occurred before 30 years of age of an employee, right for disability pension is acquired under lesser requirements in terms of insurance service: if disability occurred before 20 years of age, one year of insurance service is required, before 25 years of age two and before 30 three.

[12] Does the sick worker have protection against dismissal or is the employer permitted to terminate the employment agreement of sick workers at any time?

Labour law does not provide the possibility of cancellation of employment contract for the reason of illness or long sick leave. Law on professional rehabilitation and employment of disabled people has been adopted and it binds employers to employ certain number of disabled people.

If a person is disabled worker (injury at work or occupational disease), there is an obligation for employer to provide this worker with work according to remaining working ability. If employee refuses this schedule, employer may cancel employment contract, in which case employee is granted protection before general court.

[13] If the worker has protection against dismissal, please specify this dismissal protection.

Answer already provided at number 12

[14] Does it make a difference to the dismissal protection whether the worker is unable to work as a result of handicap or chronic illness instead of a «normal illness»?

Answer already provided at number 12